

# China's Dissidents Can't Leave

Exit ban numbers are hitting new highs as politics tightens.

By **Thomas Kellogg**, Executive Director of Georgetown Law Asia, and **Zhao Sile**



Travelers stand near the international departures area at the airport in Beijing on Feb. 6, 2016. GREG BAKER/AFP/GETTY IMAGES

JULY 23, 2019, 2:43 PM

In early July, the *New York Times* broke the news that the Chinese government has stepped up its use of exit bans against U.S. citizens. As trade tensions between the United States and China have escalated, Chinese officials have increasingly targeted American businesspeople, especially those of Chinese descent, subjecting them to various forms of harassment, including

refusing to allow them to leave the country. The problem is not limited to the United States: Several other countries, including Canada, the United Kingdom, and Australia, have warned their citizens traveling to China about the dangers that exit bans pose.

The *Times* reported on a small but growing number of cases, but the full scope of the problem is not known; privately, State Department officials speak of dozens more unreported cases. The Chinese government's use of American citizens as potential pressure points in its trade dispute with the U.S. government is deeply disturbing. Both U.S. companies doing business in China and the Trump administration need to send a clear signal to the Chinese government that such moves are deeply unacceptable—as a matter of principle, America's leading trade partner should not be blocking U.S. citizens from entering and leaving China. Doing so, as one of us has written elsewhere, is a violation of China's obligations under international law.

Yet those most vulnerable to exit bans are not American businesspeople, or even foreign citizens more generally. The Chinese government uses exit bans most frequently against its own citizens. Our research on China's use of exit bans indicates that thousands, if not tens of thousands, of Chinese citizens have been subjected to exit bans in recent years: In Shanghai alone, more than 5,000 individuals were barred from leaving the country between 2016 and 2018, according to Chinese state media reports.

It's not accurate to say that China's use of exit bans lacks a legal basis—in fact, at least a half-dozen laws and several regulations permit Chinese officials across the bureaucracy to impose exit bans on individuals. Rather, the problem is that the existing legal regime is extremely vague, effectively granting Chinese officials almost unlimited discretion to impose exit bans against individuals if and when they see fit.

Under China's Exit and Entry Administration Law, for example, individuals can be barred from exit if they are part of an ongoing civil or criminal matter, or if their departure would impact national security. The law also includes a broad-based catchall provision that allows the authorities to impose exit bans on individuals in "other circumstances in which exit from China is not allowed in accordance with laws or administrative regulations." In practice, individuals can be subject to an exit ban for a wide range of reasons, including tangled divorce proceedings, business deals gone bad, or merely earning the ire of an official with enough influence to get someone placed on a list.

Using open-source documents, including press reports, press statements by international human rights groups, and academic papers by Chinese scholars, we have collected information on 149 cases of exit bans applied to Chinese citizens over the past 15 years. Though several cases involve businesspeople, the barred individuals in most of these cases are activists, human rights lawyers, and liberal intellectuals, as they are more likely to publicize their experience. Though

many exit bans are short-lived and are imposed to block an individual from attending a particular meeting, some have been subjected to exit bans that have lasted months or even years.

The use of exit bans against activists and rights lawyers illustrates a core purpose of these bans from Beijing's perspective: They are a key tool to suppress criticism of its human rights record, as well as a means to punish peaceful critics.

The lack of meaningful legal standards and safeguards makes it easier to impose exit bans against activists and rights lawyers, usually on undefined—and likely also completely baseless—national security grounds. In 69 cases, nearly half of those we collected, the authorities cited “jeopardizing national security” as the reason why the person was banned from leaving, although they generally provided no evidence to support such a claim. In 62 cases, the government failed to give any reason whatsoever as to why an exit ban has been imposed, leaving the individuals to guess at what they might have done to warrant such a significant limitation on basic freedom.

We also identified 23 cases in which relatives of activists and lawyers were subjected to exit bans, including a 5-year-old girl whose father is a human rights lawyer. Such cases are deeply disturbing, in that they suggest an effort by the government to use restrictions against family members as a means to coerce activists, intellectuals, and rights lawyers to toe the Communist Party line.

The imposition of exit bans on family members can have particularly pernicious effects. “The negative effect of the exit ban was particularly severe for my son,” said Wang Qiaoling, whose husband, the prominent rights lawyer Li Heping, was arrested in a massive crackdown against human rights lawyers in 2015. Wang told us that her son was a student in the international department of his high school and thus was not eligible to take the *gaokao*, China's national college entrance exam. As with other students in his department, he could only apply to universities overseas—thus the ban meant that he was effectively blocked from going to college.

Sadly, the use of family members as bargaining chips is all too common in the Chinese context, even with no borders involved. The businesswoman Lynn Wang, for example, lost her job at a Chinese technology parts company merely because she is married to the prominent rights lawyer Teng Biao. The company may well have had little choice—it was apparently unable to sell products to Chinese government customers for as long as Wang remained on their staff.

Crucially, there is no meaningful review mechanism for exit bans, leaving no way to overturn them. In our research on the use of exit bans against activists and rights lawyers, we identified only 20 individuals who sought a judicial remedy. All of them were unsuccessful: We were unable to identify even a single case in which a judge held an exit ban to be unlawful. One lawyer barred from exit told us that he didn't bother taking the government to court because he simply didn't believe that China's judiciary is independent enough to do anything about his case.

In general, people subjected to exit bans are largely left to negotiate with government officials over what steps they might take—if any—to have the ban revoked. One of our interviewees, the Chinese dissident Yedu, said that he was usually forced to make various promises to the police, such as not taking foreign media interviews and not participating in public events abroad, every time he wanted to travel internationally. In essence, he had to bargain away his rights merely to obtain a passport.

Troublingly, the few checks that do exist in the law—such as the requirement that individuals subjected to exit bans be notified as soon as possible—are often completely ignored. In a full 143 out of the 149 cases we documented, individuals found out they were subjected to exit bans only when they attempted to leave the country or applied for travel documents. For the Chinese government, the system's arbitrariness and lack of transparency are likely features, not bugs—activists subjected to exit bans in the past have told us that they have engaged in self-censorship when traveling abroad, for fear of saying or doing anything that would get them on the no-travel list.

There are no doubt some cases in which exit bans are appropriate, such as ongoing criminal proceedings, which is why many states have such laws on the books and make regular—measured, appropriate, and judicially reviewable—use of them. The Chinese government doesn't have to scrap its system altogether. But Beijing should engage in extensive reforms to make sure that the rights of both citizens and visitors are not abused. For its part, the U.S. government needs to keep up the pressure on China, especially when it comes to advocating on behalf of American citizens prevented from leaving. At the same time, the international community should go beyond individual cases and start pushing Beijing to fix a system that is fundamentally broken.